

AMENDED IN ASSEMBLY APRIL 8, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1692

Introduced by Assembly Member Garcia

February 13, 2014

An act to amend Sections 85304, 85304.5, 89511, 89512, 89513, and 89519 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL’S DIGEST

AB 1692, as amended, Garcia. Political Reform Act of 1974.

(1) The Political Reform Act of 1974 provides for the comprehensive regulation of campaign financing, including requiring the reporting of campaign contributions and expenditures, as defined, and imposing other reporting and recordkeeping requirements on campaign committees, as defined. The Fair Political Practices Commission administers and enforces the act. A violation of the act’s provisions is punishable as a misdemeanor.

The act authorizes certain candidates and elective officers to establish a separate legal defense fund campaign account to defray attorney’s fees and other related legal costs incurred in the defense of the candidate or elective officer who is subject to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officers’ governmental activities and duties, as specified.

This bill would define the phrase “attorney’s fees and other related legal costs” for purposes of legal defense funds to include only attorney’s fees and other legal costs related to the defense of the candidate or officer and administrative costs directly related to

compliance with the act. The definition would exclude certain other costs, including payment or reimbursement for a fine, penalty, judgment or settlement, except as specified.

The act provides that all contributions deposited into a campaign account are deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding offices. The act provides that an expenditure to seek or hold office is within the lawful execution of this trust if it is reasonably related to a political, legislative, or governmental purpose. Expenditures that confer a substantial personal benefit must be directly related to a political, legislative, or governmental purpose. The act prohibits the use of campaign funds for fines, penalties, judgments, or settlements, except for certain parking fines and for actions for which attorney's fees may be paid with contributions under the act.

The bill would prohibit an expenditure of campaign funds of more than \$200 for a fine, penalty, judgment, or settlement relating to an expenditure of campaign funds that resulted in a personal benefit to the candidate or officer if it is determined that the expenditure was not reasonably related to a political, legislative, or governmental purpose. The bill would also ~~impose the \$200 limitation with respect to~~ *prohibit an expenditure of campaign funds for* a fine, penalty, judgment, or settlement relating to an expenditure of campaign funds that resulted in a substantial personal benefit to the candidate or officer if it is determined that the expenditure was not directly related to a political, legislative, or governmental purpose. The bill would also apply the above-described definition for "attorney's fees and other costs" for purposes of the article concerning campaign fund expenditures.

(2) By expanding the scope of an existing crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 85304 of the Government Code is
2 amended to read:
3 85304. (a) A candidate for elective state office or an elected
4 state officer may establish a separate account to defray attorney's
5 fees and other related legal costs incurred for the candidate's or
6 officer's legal defense if the candidate or officer is subject to one
7 or more civil or criminal proceedings or administrative proceedings
8 arising directly out of the conduct of an election campaign, the
9 electoral process, or the performance of the officer's governmental
10 activities and duties. These funds may be used only to defray those
11 attorney fees and other related legal costs.
12 (b) A candidate may receive contributions to this account that
13 are not subject to the contribution limits set forth in this article.
14 However, all contributions shall be reported in a manner prescribed
15 by the commission.
16 (c) Once the legal dispute is resolved, the candidate shall dispose
17 of any funds remaining after all expenses associated with the
18 dispute are discharged for one or more of the purposes set forth in
19 paragraphs (1) to (5), inclusive, of subdivision (b) of Section
20 89519.
21 (d) (1) For purposes of this section and Section 85304.5,
22 "attorney's fees and other related legal costs" includes only the
23 following:
24 (A) Attorney's fees and other legal costs related to the defense
25 of the candidate or officer.
26 (B) Administrative costs directly related to compliance with the
27 requirements of this title.
28 (2) "Attorney's fees and other related legal costs" does not
29 include expenses for fundraising, media or political consulting
30 fees, mass mailing or other advertising, or, except as expressly
31 authorized by subdivision (c) of Section 89513, a payment or
32 reimbursement for a fine, penalty, judgment or settlement, or a
33 payment to return or disgorge contributions made to any other
34 committee controlled by the candidate or officer.

1 SEC. 2. Section 85304.5 of the Government Code is amended
2 to read:

3 85304.5. (a) A candidate for elective office other than an
4 elective state office or an elected officer other than an elected state
5 officer may establish a separate account pursuant to subdivision
6 (a) of Section 85304 and may use these funds only to defray
7 attorney's fees and other related legal costs.

8 (b) A candidate for an elective office other than an elective state
9 office may receive contributions to the separate account subject
10 to any limitations provided by local ordinance. However, all
11 contributions to these separate accounts shall be reported in a
12 manner prescribed by the commission.

13 (c) Once the legal dispute is resolved, the candidate or elected
14 officer shall dispose of any funds remaining in the separate
15 accounts after all expenses associated with the dispute are
16 discharged for one or more of the purposes set forth in paragraphs
17 (1) to (5), inclusive, of subdivision (b) of Section 89519.

18 (d) For purposes of this section, "attorney's fees and other
19 related legal costs" has the same meaning as in Section 85304.

20 SEC. 3. Section 89511 of the Government Code is amended
21 to read:

22 89511. (a) This article applies to campaign funds held by
23 candidates for elective office, elected officers, controlled
24 committees, ballot measure committees, committees opposed to
25 a candidate or measure, and any committee which qualifies as a
26 committee pursuant to subdivision (a) of Section 82013.

27 (b) (1) For purposes of this chapter, "campaign funds" includes
28 any contributions, cash, cash equivalents, and other assets received
29 or possessed by a committee as defined by subdivision (a) of
30 Section 82013.

31 (2) For purposes of this chapter, "committee" means a controlled
32 committee, ballot measure committee, committee opposed to a
33 candidate or measure, and any committee which qualifies as a
34 committee pursuant to subdivision (a) of Section 82013.

35 (3) For purposes of this chapter, "substantial personal benefit"
36 means an expenditure of campaign funds which results in a direct
37 personal benefit with a value of more than two hundred dollars
38 (\$200) to a candidate, elected officer, or any individual or
39 individuals with authority to approve the expenditure of campaign
40 funds held by a committee.

1 (4) For purposes of this article, “household” includes the
2 candidate’s or elected officer’s spouse, dependent children, and
3 parents who reside with the candidate or elected officer.

4 (5) (A) For purposes of this article, “attorney’s fees and other
5 costs” includes only the following:

6 (i) Attorney’s fees and other legal costs related to the defense
7 of the candidate or officer.

8 (ii) Administrative costs directly related to compliance with the
9 requirements of this title.

10 (B) “Attorney’s fees and other costs” does not include expenses
11 for fundraising, media or political consulting fees, mass mailing
12 or other advertising, or, except as expressly authorized by
13 subdivision (c) of Section 89513, a payment or reimbursement for
14 a fine, penalty, judgment or settlement, or a payment to return or
15 disgorge contributions made to any other committee controlled by
16 the candidate or officer.

17 SEC. 4. Section 89512 of the Government Code is amended
18 to read:

19 89512. (a) An expenditure to seek office is within the lawful
20 execution of the trust imposed by Section 89510 if it is reasonably
21 related to a political purpose. An expenditure associated with
22 holding office is within the lawful execution of the trust imposed
23 by Section 89510 if it is reasonably related to a legislative or
24 governmental purpose. Expenditures which confer a substantial
25 personal benefit shall be directly related to a political, legislative,
26 or governmental purpose.

27 (b) Except as expressly authorized by this article, an expenditure
28 for a fine, penalty, judgment, or settlement is not within the lawful
29 execution of the trust imposed by Section 89510.

30 SEC. 5. Section 89513 of the Government Code is amended
31 to read:

32 89513. This section governs the use of campaign funds for the
33 specific expenditures set forth in this section. It is the intent of the
34 Legislature that this section shall guide the interpretation of the
35 standard imposed by Section 89512 as applied to other expenditures
36 not specifically set forth in this section.

37 (a) (1) Campaign funds shall not be used to pay or reimburse
38 the candidate, the elected officer, or any individual or individuals
39 with authority to approve the expenditure of campaign funds held
40 by a committee, or employees or staff of the committee or the

1 elected officer's governmental agency for travel expenses and
2 necessary accommodations except when these expenditures are
3 directly related to a political, legislative, or governmental purpose.

4 (2) For the purposes of this section, payments or reimbursements
5 for travel and necessary accommodations shall be considered as
6 directly related to a political, legislative, or governmental purpose
7 if the payments would meet standards similar to the standards of
8 the Internal Revenue Service pursuant to Sections 162 and 274 of
9 the Internal Revenue Code for deductions of travel expenses under
10 the federal income tax law.

11 (3) For the purposes of this section, payments or reimbursement
12 for travel by the household of a candidate or elected officer when
13 traveling to the same destination in order to accompany the
14 candidate or elected officer shall be considered for the same
15 purpose as the candidate's or elected officer's travel.

16 (4) Whenever campaign funds are used to pay or reimburse a
17 candidate, elected officer, his or her representative, or a member
18 of the candidate's household for travel expenses and necessary
19 accommodations, the expenditure shall be reported as required by
20 Section 84211.

21 (5) Whenever campaign funds are used to pay or reimburse for
22 travel expenses and necessary accommodations, any mileage credit
23 that is earned or awarded pursuant to an airline bonus mileage
24 program shall be deemed personally earned by or awarded to the
25 individual traveler. Neither the earning or awarding of mileage
26 credit, nor the redeeming of credit for actual travel, shall be subject
27 to reporting pursuant to Section 84211.

28 (b) (1) Campaign funds shall not be used to pay for or reimburse
29 the cost of professional services unless the services are directly
30 related to a political, legislative, or governmental purpose.

31 (2) Expenditures by a committee to pay for professional services
32 reasonably required by the committee to assist it in the performance
33 of its administrative functions are directly related to a political,
34 legislative, or governmental purpose.

35 (3) Campaign funds shall not be used to pay health-related
36 expenses for a candidate, elected officer, or any individual or
37 individuals with authority to approve the expenditure of campaign
38 funds held by a committee, or members of his or her household.
39 "Health-related expenses" includes, but is not limited to,
40 examinations by physicians, dentists, psychiatrists, psychologists,

1 or counselors, expenses for medications, treatments or medical
2 equipment, and expenses for hospitalization, health club dues, and
3 special dietary foods. However, campaign funds may be used to
4 pay employer costs of health care benefits of a bona fide employee
5 or independent contractor of the committee.

6 (c) Campaign funds shall not be used to pay or reimburse fines,
7 penalties, judgments, or settlements, except those resulting from
8 either of the following:

9 (1) Parking citations incurred in the performance of an activity
10 that was directly related to a political, legislative, or governmental
11 purpose.

12 (2) Any other action for which payment of attorney's fees from
13 contributions would be permitted pursuant to this title. However,
14 ~~an expenditure of campaign funds shall in no event exceed two~~
15 ~~hundred dollars (\$200) for payment of~~ *campaign funds shall not*
16 *be used to pay* a fine, penalty, judgment, or settlement relating to
17 an expenditure of campaign funds that resulted in either of the
18 following:

19 (A) A personal benefit to the candidate or officer if it is
20 determined that the expenditure was not reasonably related to a
21 political, legislative, or governmental purpose.

22 (B) A substantial personal benefit to the candidate or officer if
23 it is determined that the expenditure was not directly related to a
24 political, legislative, or governmental, purpose.

25 (d) Campaign funds shall not be used for campaign, business,
26 or casual clothing except specialty clothing that is not suitable for
27 everyday use, including, but not limited to, formal wear, if this
28 attire is to be worn by the candidate or elected officer and is directly
29 related to a political, legislative, or governmental purpose.

30 (e) (1) Except where otherwise prohibited by law, campaign
31 funds may be used to purchase or reimburse for the costs of
32 purchase of tickets to political fundraising events for the attendance
33 of a candidate, elected officer, or his or her immediate family, or
34 an officer, director, employee, or staff of the committee or the
35 elected officer's governmental agency.

36 (2) Campaign funds shall not be used to pay for or reimburse
37 for the costs of tickets for entertainment or sporting events for the
38 candidate, elected officer, or members of his or her immediate
39 family, or an officer, director, employee, or staff of the committee,

1 unless their attendance at the event is directly related to a political,
2 legislative, or governmental purpose.

3 (3) The purchase of tickets for entertainment or sporting events
4 for the benefit of persons other than the candidate, elected officer,
5 or his or her immediate family are governed by subdivision (f).

6 (f) (1) Campaign funds shall not be used to make personal gifts
7 unless the gift is directly related to a political, legislative, or
8 governmental purpose. The refund of a campaign contribution
9 does not constitute the making of a gift.

10 (2) Nothing in this section shall prohibit the use of campaign
11 funds to reimburse or otherwise compensate a public employee
12 for services rendered to a candidate or committee while on
13 vacation, leave, or otherwise outside of compensated public time.

14 (3) An election victory celebration or similar campaign event,
15 or gifts with a total cumulative value of less than two hundred fifty
16 dollars (\$250) in a single year made to an individual employee, a
17 committee worker, or an employee of the elected officer's agency,
18 are considered to be directly related to a political, legislative, or
19 governmental purpose. For purposes of this paragraph, a gift to a
20 member of a person's immediate family shall be deemed to be a
21 gift to that person.

22 (g) Campaign funds shall not be used to make loans other than
23 to organizations pursuant to Section 89515, or, unless otherwise
24 prohibited, to a candidate for elective office, political party, or
25 committee.

26 ~~SEC. 6. Section 89519 of the Government Code is amended~~
27 ~~to read:~~

28 ~~89519. (a) Upon leaving any elected office, or at the end of~~
29 ~~the postelection reporting period following the defeat of a candidate~~
30 ~~for elective office, whichever occurs last, campaign funds raised~~
31 ~~after January 1, 1989, under the control of the former candidate~~
32 ~~or elected officer shall be considered surplus campaign funds and~~
33 ~~shall be disclosed pursuant to Chapter 4 (commencing with Section~~
34 ~~84100).~~

35 ~~(b) Surplus campaign funds shall be used only for the following~~
36 ~~purposes:~~

37 ~~(1) The payment of outstanding campaign debts or elected~~
38 ~~officer's expenses.~~

39 ~~(2) The repayment of contributions.~~

1 ~~(3) Donations to any bona fide charitable, educational, civic,~~
2 ~~religious, or similar tax-exempt, nonprofit organization, where no~~
3 ~~substantial part of the proceeds will have a material financial effect~~
4 ~~on the former candidate or elected officer, any member of his or~~
5 ~~her immediate family, or his or her campaign treasurer.~~

6 ~~(4) Contributions to a political party committee, provided the~~
7 ~~campaign funds are not used to support or oppose candidates for~~
8 ~~elective office. However, the campaign funds may be used by a~~
9 ~~political party committee to conduct partisan voter registration,~~
10 ~~partisan get-out-the-vote activities, and slate mailers as that term~~
11 ~~is defined in Section 82048.3.~~

12 ~~(5) Contributions to support or oppose any candidate for federal~~
13 ~~office, any candidate for elective office in a state other than~~
14 ~~California, or any ballot measure.~~

15 ~~(6) The payment for professional services reasonably required~~
16 ~~by the committee to assist in the performance of its administrative~~
17 ~~functions, including payment for attorney's fees and other costs~~
18 ~~for litigation which arises directly out of a candidate's or elected~~
19 ~~officer's activities, duties, or status as a candidate or elected officer,~~
20 ~~including, but not limited to, an action to enjoin defamation,~~
21 ~~defense of an action brought of a violation of state or local~~
22 ~~campaign, disclosure, or election laws, and an action from an~~
23 ~~election contest or recount.~~

24 ~~(e) For purposes of this section, the payment for, or the~~
25 ~~reimbursement to the state of, the costs of installing and monitoring~~
26 ~~an electronic security system in the home or office, or both, of a~~
27 ~~candidate or elected officer who has received threats to his or her~~
28 ~~physical safety shall be deemed an outstanding campaign debt or~~
29 ~~elected officer's expense, provided that the threats arise from his~~
30 ~~or her activities, duties, or status as a candidate or elected officer~~
31 ~~and that the threats have been reported to and verified by an~~
32 ~~appropriate law enforcement agency. Verification shall be~~
33 ~~determined solely by the law enforcement agency to which the~~
34 ~~threat was reported. The candidate or elected officer shall report~~
35 ~~any expenditure of campaign funds made pursuant to this section~~
36 ~~to the commission. The report to the commission shall include the~~
37 ~~date that the candidate or elected officer informed the law~~
38 ~~enforcement agency of the threat, the name and the telephone~~
39 ~~number of the law enforcement agency, and a brief description of~~
40 ~~the threat. No more than five thousand dollars (\$5,000) in surplus~~

~~campaign funds may be used, cumulatively, by a candidate or elected officer pursuant to this subdivision. Payments made pursuant to this subdivision shall be made during the two years immediately following the date upon which the campaign funds become surplus campaign funds. The candidate or elected officer shall reimburse the surplus fund account for the fair market value of the security system no later than two years immediately following the date upon which the campaign funds became surplus campaign funds. The campaign funds become surplus campaign funds upon sale of the property on which the system is installed, or prior to the closing of the surplus campaign fund account, whichever comes first. The electronic security system shall be the property of the campaign committee of the candidate or elected officer.~~

SEC. 6. Section 89519 of the Government Code, as amended by Chapter 9 of the Statutes of 2014, is amended to read:

89519. (a) Upon the 90th day after leaving an elective office, or the 90th day following the end of the postelection reporting period following the defeat of a candidate for elective office, whichever occurs last, campaign funds under the control of the former candidate or elected officer shall be considered surplus campaign funds and shall be disclosed pursuant to Chapter 4 (commencing with Section 84100).

(b) Surplus campaign funds shall be used only for the following purposes:

(1) The payment of outstanding campaign debts or elected officer's expenses.

(2) The repayment of contributions.

(3) Donations to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer.

(4) Contributions to a political party committee, provided the campaign funds are not used to support or oppose candidates for elective office. However, the campaign funds may be used by a political party committee to conduct partisan voter registration, partisan get-out-the-vote activities, and slate mailers as that term is defined in Section 82048.3.

1 (5) Contributions to support or oppose a candidate for federal
2 office, a candidate for elective office in a state other than
3 California, or a ballot measure.

4 (6) The payment for professional services reasonably required
5 by the committee to assist in the performance of its administrative
6 functions, including payment for attorney's fees *and other costs*
7 for litigation that arises directly out of a candidate's or elected
8 officer's activities, duties, or status as a candidate or elected officer,
9 including, but not limited to, an action to enjoin defamation,
10 defense of an action brought for a violation of state or local
11 campaign, disclosure, or election laws, and an action from an
12 election contest or recount.

13 (c) For purposes of this section, the payment for, or the
14 reimbursement to the state of, the costs of installing and monitoring
15 an electronic security system in the home or office, or both, of a
16 candidate or elected officer who has received threats to his or her
17 physical safety shall be deemed an outstanding campaign debt or
18 elected officer's expense, provided that the threats arise from his
19 or her activities, duties, or status as a candidate or elected officer
20 and that the threats have been reported to and verified by an
21 appropriate law enforcement agency. Verification shall be
22 determined solely by the law enforcement agency to which the
23 threat was reported. The candidate or elected officer shall report
24 an expenditure of campaign funds made pursuant to this section
25 to the Commission. The report to the Commission shall include
26 the date that the candidate or elected officer informed the law
27 enforcement agency of the threat, the name and the telephone
28 number of the law enforcement agency, and a brief description of
29 the threat. No more than five thousand dollars (\$5,000) in surplus
30 campaign funds may be used, cumulatively, by a candidate or
31 elected officer pursuant to this subdivision. Payments made
32 pursuant to this subdivision shall be made during the two years
33 immediately following the date upon which the campaign funds
34 become surplus campaign funds. The candidate or elected officer
35 shall reimburse the surplus fund account for the fair market value
36 of the security system no later than two years immediately
37 following the date upon which the campaign funds became surplus
38 campaign funds. The campaign funds become surplus campaign
39 funds upon sale of the property on which the system is installed,
40 or prior to the closing of the surplus campaign fund account,

1 whichever comes first. The electronic security system shall be the
2 property of the campaign committee of the candidate or elected
3 officer.

4 SEC. 7. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.

13 SEC. 8. The Legislature finds and declares that this bill furthers
14 the purposes of the Political Reform Act of 1974 within the
15 meaning of subdivision (a) of Section 81012 of the Government
16 Code.